



---

**PRELIMINARY DRAFT**  
**No. 3175**

**PREPARED BY**  
**LEGISLATIVE SERVICES AGENCY**  
**2012 GENERAL ASSEMBLY**

---

DIGEST

**Citations Affected:** IC 16-41-6-1.

**Synopsis:** HIV testing. Allows a person to perform a screening or test for the antibody or antigen to HIV unless the individual to be tested indicates a refusal to consent to the test in writing. (Current law prohibits a person from performing the test without the oral or written consent of the individual.) Requires a physician to document a refusal by an individual or the individual's representative.

**Effective:** July 1, 2012.



A BILL FOR AN ACT to amend the Indiana Code concerning health.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 16-41-6-1, AS AMENDED BY P.L.94-2010,  
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2012]: Sec. 1. (a) ~~Except as provided in IC 16-41-8-6,~~  
4 ~~IC 16-41-10-2.5; and subsection (b), a person may not perform Unless~~  
5 **an individual or the individual's representative (as defined in**  
6 **IC 16-36-1) refuses in writing to have** a screening or confirmatory  
7 test for the antibody or antigen to HIV ~~without the oral or written~~  
8 ~~consent of the individual to be tested or a representative as authorized~~  
9 ~~under IC 16-36-1. A performed, a physician may perform the~~  
10 **screening or test. The physician ordering the test or the physician's**  
11 **authorized representative shall document whether or not the individual**  
12 **has consented. The test for the antibody or antigen to HIV may not be**  
13 **performed on a woman under section 5 or 6 of this chapter if the**  
14 **woman refuses under section 7 of this chapter to consent to the test.**  
15 **refused.**

16 (b) ~~The If one (1) of the following conditions exists, a test for the~~  
17 ~~antibody or antigen to HIV may be performed if one (1) of the~~  
18 ~~following conditions exists: regardless of the individual's written~~  
19 **refusal described in subsection (a):**

20 (1) If ordered by a physician who has obtained a health care  
21 consent under IC 16-36-1 or ~~an implied consent under emergency~~  
22 ~~circumstances~~ and the test is medically necessary to diagnose or  
23 treat the patient's condition.

24 (2) Under a court order based on clear and convincing evidence  
25 of a serious and present health threat to others posed by an  
26 individual. A hearing held under this ~~subsection~~ **subdivision** shall  
27 be held in camera at the request of the individual.

28 (3) If the test is done on blood collected or tested anonymously as  
29 part of an epidemiologic survey under IC 16-41-2-3 or  
30 IC 16-41-17-10(a)(5).

31 (4) The test is ordered under section 4 of this chapter.



1 (5) The test is required or authorized under IC 11-10-3-2.5.  
2 **(6) The individual upon whom the test will be performed is**  
3 **described in IC 16-41-8-6 or IC 16-41-10-2.5.**  
4 ~~(7)~~ **(7) A court may order a person has ordered the individual** to  
5 undergo testing for HIV under IC 35-38-1-10.5(a) or  
6 IC 35-38-2-2.3(a)(16).

